



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0169]

Entry-Level Driver Training: SBL Truck Driving Academy, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption application from SBL Truck Driving Academy, Inc. (SBL). SBL sought an exemption from the theory and behind-the-wheel (BTW) instructor requirements contained in the entry-level driver training (ELDT) regulations for two of its instructors. SBL specifically requested an exemption from the requirement that instructors have at least two years of experience driving a commercial motor vehicle (CMV) requiring a commercial driver's license (CDL) of the same or higher class and/or the same endorsement level for which training is to be provided. FMCSA analyzed the exemption application and public comments and determined that the application lacked evidence that would ensure an equivalent or greater level of safety than would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. E-mail: richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number “FMCSA-2021-0169” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “View Related Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2021-0169” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify

the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The ELDT regulations, implemented on February 7, 2022, and set forth in 49 CFR 380, subparts F and G, established minimum training standards for individuals applying for certain CDLs and defined curriculum standards for theory and BTW training. The ELDT regulations also established an online training provider registry (TPR), eligibility requirements for providers to be listed on the TPR, and requirements for instructors. Under 49 CFR 380.713, a training provider must use instructors who meet the definitions of “Theory instructor” and “Behind-the-wheel (BTW) instructor,” set forth in 49 CFR 380.605. The definitions of “Theory instructor” and “BTW instructor” in 49 CFR 380.605 require that instructors hold a CDL of the same (or higher) class, with all endorsements necessary to operate the CMV for which training is to be provided, and have either: (1) a minimum of 2 years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement; or (2) at least 2 years of experience as a BTW CMV instructor.

Applicant’s Request

SBL seeks an exemption from the requirement in 49 CFR 380.713 that a training provider use instructors who meet the definitions of “Theory instructor” and “BTW instructor” in 49 CFR 380.605. SBL states that it has two employees who do not have two years of required driving experience. SBL states the employees were qualified to provide training prior to implementation of the ELDT regulations on February 7, 2022, have Class A CDLs with tanker endorsements, and are medically qualified.

SBL argues that the instructor qualifications required by the ELDT regulations will have a severe negative impact on its business and on the driver shortage. SBL

requests an exemption that would allow the two instructors to provide instruction without having two years of driving experience while they accumulate the required level of experience. They assert that the exemption would allow for full instructor staffing, resulting in a “50% increase of approximately 96 students annually.” If the exemption is not granted, SBL states that it would be forced to terminate these employees and seek to replace them with other instructors with unproven track records.

SBL reasons that FMCSA has included “grandfathering” provisions in the implementation of other new rules and therefore should apply a “grandfathering” provision to the ELDT requirements relating to driving experience. SBL points to 49 CFR 380.603 which provides that individuals who obtained a Commercial Learner’s Permit (CLP) before February 7, 2022, are not required to comply with the ELDT rule if they obtain a CDL before the CLP expires. SBL is requesting similar consideration for State-licensed instructors who met applicable Federal requirements prior to February 7, 2022.

IV. Method to Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, SBL offers a list of the qualifications for the two driver training instructors for whom the exemption is requested. According to SBL, both individuals meet the qualifications that were required prior to implementation of the ELDT rule; both have Class A CDLs with tanker endorsements; both are medically qualified; both graduated from a State-licensed truck driver training school; both have taught over the road driving; both have previously trained commercial drivers; one individual worked as a commercial driver; and both have the ability to instruct all topics required by the ELDT regulations.

SBL indicates that the request for the exemption “places no known negative safety impact” and avers that SBL will continue to adhere to all applicable State and Federal regulations that govern the safe operation of CMVs. SBL notes that the two

instructors met the qualification requirements of the South Carolina Department of Motor Vehicles, in effect prior to implementation of the ELDT regulations, and their instruction has not negatively impacted safety. Those requirements allow instructors with fewer than two years of driving experience to deliver training.

SBL also cites to a 2013 Bureau of Transportation Statistics report stating that motor vehicle fatalities in 2010 were trending downward. SBL also cites to a 2008 American Transportation Research Institute (ATRI) report that found no relation between driver training duration and subsequent driver safety performance. A copy of SBL's application for exemption is available for review in the docket for this notice.

V. Public Comments

On May 25, 2022, FMCSA published notice of SBL's application and requested public comment [87 FR 31930]. The Agency received nine comments. The Owner-Operator Independent Driver's Association (OOIDA) strongly opposed the exemption request. OOIDA commented that they were one of the primary industry stakeholders on the ELDTAC when the "framework" of the ELDT rule was agreed upon during the negotiated rulemaking, including support of the provision that required CDL experience for training instructors, as CDL experience is essential to deliver comprehensive training to entry-level drivers. OOIDA believes there is no substitute for an experienced BTW trainer and employing these instructors will help achieve the objectives of the ELDT regulations. OOIDA states that exempting instructors without CDL experience will not result in an equivalent or greater level of safety than is now required by the ELDT regulations. OOIDA added that the delayed implementation of the ELDT final rule, from 2020 to 2022, allowed even more time for training providers to meet the requisite CMV driving experience, or the minimum experience required to serve as a BTW CMV instructor under the ELDT regulations.

Seven other individual commenters opposed the requested exemption, while only one commenter supported the request. Of those opposing the exemption, a number cited similar concerns raised by OOIDA, i.e., that the ELDT rule was agreed upon through the negotiated rulemaking process and, therefore, the rule's "key" provisions should not be changed. Another commenter stated that if SBL's petition is approved, the Agency may as well remove the two-year requirement for instructors, and that other CDL driver training schools will request similar relief. The only commenter supporting the request noted that SBL stated that these individuals have trained before and should be allowed to be grandfathered in as qualified instructors.

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated SBL's application and the public comments. The Agency concludes that SBL presented insufficient evidence to establish that not complying with the provisions of the ELDT regulations relating to driving experience requirements for CMV instructors would meet or exceed the level of safety achieved by complying with the ELDT regulations. Although SBL provides the resumes of the two instructors for whom it seeks the exemption, SBL has not demonstrated that allowing the instructors to provide ELDT without the required experience would achieve an equivalent level of safety as would be achieved by complying with the ELDT instructor qualification requirements. SBL cites to 2010 data indicating a downward trend in motor vehicle fatalities, however, that data is not relevant to whether not complying with the ELDT regulations provides an equivalent level of safety (<https://www.bts.gov/content/motor-vehicle-safety-data>). As to the 2008 ATRI study SBL cites, FMCSA and the ELDTAC considered that study, along with other studies, during the rulemaking. FMCSA concluded that data quality and methodological issues prevented the study from being used as definitive guidance and further noted that ATRI described the study's results as preliminary. Further, the ATRI study is not determinative of whether the ELDT

provided by the individuals subject to this exemption request would achieve a level of safety equivalent to that achieved by complying with the current instructor qualifications.

The Agency concurs with commenters stating allowing some individuals to provide ELDT without the required driving experience could open the door for similar exemption requests. If exemptions are granted on a widespread basis, such a result would be inconsistent with a primary goal of the ELDT regulations, which was to establish a uniform Federal minimum ELDT standard.

For the above reasons, SBL's exemption application is denied.

Robin Hutcheson,

Administrator.

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